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In re application of:

Frampton E. Ellis III

: Group Art Unit: TECHNOLOGY CENTER R3700  
: 3728 TECHNOLOGY CENTER

Application No.

09/993,665

: Examiner: Not Yet Assigned

Filed: November 27, 2001

: Attorney Docket No.:  
: ANAT-4USDIV5

For: Corrective Shoe Sole Structures Using a  
Contour Greater Than the Theoretically Ideal:  
Stability Plane

**INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. §1.97**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. §§1.56 and 1.97 and MPEP §2280, Applicant submits herewith patents, publications and other information, of which it is aware and which the Examiner is asked to consider. These documents are listed on the attached Substitute Form PTO 1449 (in duplicate). This Information Disclosure Statement is being submitted before the issuance of a first Office Action, therefore, no fee is believed to be due in connection with this filing. However, if any fee is due, the Commissioner is authorized to charge Deposit Account No. 50-0462. Moreover, please credit any overpayment to Deposit Account No. 50-0462.

**CERTIFICATE OF MAILING UNDER 37 CFR 1.8**

Date:

May 20, 2003

I hereby certify that this paper, along with any document or paper referred to as being attached or enclosed, is being sent in a pre-paid envelope first class mail to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Name of person sending correspondence

Diane Webb

Signature of person sending correspondence

Diane Webb

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached Substitute PTO 1449 form.

This submission does not represent that a search has been made (37 C.F.R. §1.97(g)) or that no better art exists and does not constitute an admission that each or all of the listed documents are material (37 C.F.R. §1.97(h)) or constitute "prior art". The filing of this information disclosure statement shall not be construed as an admission against interest in any matter. Notice of January 9, 1992, 1135 O.G. 13-25, at 25.

If the Examiner applies any of the documents as prior art against any claims in the application and Applicant determined that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the Patent Office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

#### **Disclosure Incident to Litigation**

Pursuant to MPEP §§2001.06(c), Applicant provides this summary concerning litigation. There are five lawsuits that were filed involving patents issued to Anatomic Research, Inc. relating to footwear, the Complaints, Answers and Counterclaims of which are enclosed as part of this Information Disclosure Statement.

In the course of that litigation, the alleged infringers, adidas America, Inc., et al. (hereinafter "adidas") took the position that certain claims of the Anatomic Research footwear patents are invalid. In support of its position, adidas submitted information including approximately 475 publications, in the litigation (hereinafter "the Information").

The Applicant is concerned that one or more of the alleged infringers will attempt to raise inequitable conduct defenses based on a perceived failure to disclose information. Thus, pursuant to 37 C.F.R. §1.97, the Information obtained from adidas in the litigation is attached hereto for consideration by the Examiner and the Applicant requests the Examiner's assistance and guidance to ensure a full and complete disclosure consistent with the rules and MPEP.

For the convenience of the Examiner, we have labeled some of the more ambiguous documents.

### **Foreign References**

Reference AA, Japanese Utility Model Publication No. 2136505, in the name of Mizuno was published on November 2, 1990 and is believed to disclose in Fig. 9 a shoe insert to be inserted into a shoe having an upper portion.

Reference AB, German Publication No. DE 3021936, in the name of Rudy Marion, was published on April 23, 1981 and is believed to correspond, according to INAPDOC to, Reference BA, U.S. Patent No. 4,271,606, in the name of Rudy Marion, which issued June 8, 1991.

Reference AC, German Publication No. DE 2654116 in the name of adidas Sportschuhfabriken Adi Dassier Stiftung & Co., was published on January 4, 1979 and is believed to correspond, according to INPADOC, to Reference BB, U.S. Patent No. 4,314,413 in the name of Adolf Dassier which issued February 9, 1982.

Reference AD, Japanese Utility Model Publication No. JP 61-129505 published August 13, 1986, is believed to disclose in Fig. 1, a high polymer content footwear including a main body, a middle sole and a heel wedge. The heel wedge is made of flexible rubber while the midsole is made from EVA foam.

Reference AE, Japanese Publication No. 3-86101, in the name of Takahashi Yuji was published on April 11, 1991, and is believed to disclose, according to [esp@cenet](mailto:esp@cenet), footwear containing a gas or liquid pressurized valved tube which is held in a frame which allows the footwear to have stability, to reduce fatigue and to reinforce and improve the sports ability.

Reference AF, French Publication No. 1245672 in the name of Maurice-Jean Douheret, was published on October 3, 1960 and is believed to disclose a shoe or shoe-like article comprised of a single layer of material surrounded by a raised border. The raised border includes an extension for a stiffening element.

Reference AG, German Publication No. 1948620 in the name of Schuh insbesondere Autoschuh, was published on September 26, 1969 and is believed to disclose a shoe including a lower section and a shoe having an upper section. The lower section includes a footbed and a circumferential supporting edge.

Reference AH, German Publication No. 1 918 132 in the name of Schwaig bei Nurnberg, was published on June 16, 1965 and is believed to disclose a sports shoe including a synthetic sole having a rough cover whereby spikes are strengthened by the presence of the rough cover through which they pass.

Reference AI, German Publication No. 1918131 in the name of Fabrik Engelhorn & Co., was published on June 16, 1965 and is believed to disclose a shoe comprised of an upper material and a liner that is sewn to the outer sole. The attachment of the liner to the outer sole can include strengtheners that can be bonded to the outer sole with glue.

Reference AJ, German Publication No. 2045430 in the name of Adolf Dassler was published on March 16, 1972 and is believed to disclose a sports shoe including a shank, and a sole. A heel cap is attached to the shank by rivets.

Reference AK, German Publication No. 2036062 in the name of Adolf Dassler was published on February 3, 1972 and is believed to disclose believed to disclose a sports shoe including a heel cushioning covered with two pieces of film. The area enclosed by the film pieces is airtight.

Reference AL, German Publication No. 2522127 in the name of Adolf Dassler, was published on November 25, 1976 is believed to disclose a tennis shoe having an outer sole with a shaped portion embedded therein.

Reference AM, German Publication No. 2525613 in the name of Puma-Sportschuhfabriken Rudolf Dassler was published on December 30, 1976 and is believed to disclose a shoe having an outer sole with an edge tread pattern bordering on the sides of the contact surface of the outer sole. The edge tread pattern includes notches to provide a block-like profile.

Reference AN, German Publication No. 2602310 in the name of Adolf Dassler, was published on July 28, 1977 and is believed to disclose a tennis shoe having a sole surface that overlaps with the part of the inner sole attached to the shank. The sole includes a ring tread and four air inlet channels connecting to openings to provide ventilation of the sole.

Reference AO, German Publication No. 2613312 in the name of Puma-Sportschuhfabriken Rudolf Dassler was published on October 13, 1977 and is believed to disclose a shoe having an outer sole surface having a peripheral edge. The outer sole surface includes a fine tread pattern at the front end and a similar tread pattern at the rear end.

Reference AP, German Utility Model Publication No. 82 19 616.8 in the name of Schuhfabrik Strakosch GmbH was published on September 2, 1982 and is believed to disclose a shoe comprised of an upper section provided with a shank attached at a lowermost shank edge to the insole and also attached to the outer sole.

Reference AQ, German Publication No. 31 13 295 in the name of Metalwerk Kistingner was published on October 21, 1982 and is believed to disclose a form for making a shoe sole from two layers bonded to one another.

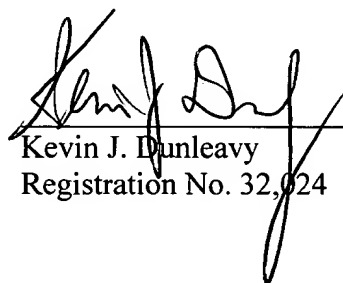
Reference AR, German Utility Model Publication No. 8530136.1 in the name of Solidschuhwark GmbH was published on February 25, 1988 and is believed to disclose a shoe including a sole element made up of a joint piece and an insole. The joint piece is located in the heel area and is attached to the underside of the insole.

Reference AS, German Publication No. 1685293 in the name of Fr.-Ing Funck was published on July 8, 1971 and is believed to disclose a shoe including a sole frame including substantially vertical walls that have a T-profile at the top that is formed into a flange. The sidewalls border on cushioning material.

Reference AT, German Publication No. 8431831 in the name of Orthotech was published December 12, 1984 and is believed to disclose a shoe including a footbed made up of two elements, an upper section and a lower section. The upper section extends the length of the shoe whereas the lower section is located in the heel area.

Respectfully submitted,

Date: May 20, 2003

  
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